

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHANE CURLEY,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:11-CV-1029

LAWRENCE STELMA, et al.,

Defendants.

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REPORT AND RECOMMENDATION

Plaintiff initiated this action on September 26, 2011, against Kent County Sheriff, Lawrence Stelma and two unknown parties. (Dkt. #1). Plaintiff's claims against Defendant Stelma have since been dismissed. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's claims against the two unidentified defendants be **dismissed** for failure to failure to timely effect service and this matter **terminated**.

Federal Rule of Civil Procedure 4(c) indicates that "[a] summons must be served together with a copy of the complaint." The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, "the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time." If the plaintiff demonstrates good cause for such failure, however, the court "must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m).

Plaintiff initiated this action on September 26, 2011. On November 9, 2011, the Court determined that Plaintiff's complaint was not subject to dismissal and, therefore, ordered that the complaint be served on defendants. While service was effected on Defendant Stelma, service, obviously, could not be effected on the two unidentified defendants. In the ten months since initiating this action, Plaintiff has failed to identify the two unnamed defendants. Plaintiff has likewise neither requested assistance identifying these individuals nor an extension of time to effect service on them. Considering Plaintiff's lack of diligence, the Court recommends that Plaintiff's claims against Unknown Party #1 and Unknown Party #2 be dismissed without prejudice for failure to timely effect service.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff's claims against Unknown Party #1 and Unknown Party #2 be **dismissed without prejudice for failure to timely effect service and this matter terminated.**

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: August 6, 2012

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge